

MONTANA LEGISLATIVE HISTORY

Chapter 97 19 99

Bill H _____ S 8 Original bill & history ✓c

H. Committee on Judiciary

Hearing Date(s) 1-25 ✓c

2-4 ✓c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 1-6 ✓c

1-13 ✓c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HISTORY AND FINAL STATUS 1999

1/22	Committee Executive Action--Bill Concurred	17	1
1/23	Committee Report--Bill Concurred		
2/06	2nd Reading Concurred	93	4
2/09	3rd Reading Concurred	95	5

Returned to Senate
 2/09 Sent to Enrolling
 2/10 Returned from Enrolling
 2/11 Signed by President
 2/12 Signed by Speaker
 2/16 Transmitted to Governor
 2/18 Signed by Governor
 2/20 Chapter Number Assigned
 Chapter Number 24
 Effective Date: 10/01/1999 - All Sections

SB 7 Introduced by Jabs *LC0125 Drafter: Everts*

Revise the Method of Leasing State Grazing and Agricultural Lands;...

By Request of Department of Natural Resources and Conservation

12/02	Introduced		
12/22	Referred to Agriculture, Livestock and Irrigation		
1/04	1st Reading		
1/04	Fiscal Note Requested		
1/08	Fiscal Note Signed		
1/08	Fiscal Note Received		
1/09	Fiscal Note Printed		
1/11	Hearing		
1/14	Committee Executive Action--Bill Passed	8	1
1/14	Committee Report--Bill Passed		
1/16	2nd Reading Passed	47	0
1/18	3rd Reading Passed	49	0

1/19	Transmitted to House		
1/28	Referred to Agriculture		
1/28	Hearing		
1/29	Committee Executive Action--Bill Concurred	20	0
1/30	Committee Report--Bill Concurred		
2/03	2nd Reading Concurred	99	1
2/04	3rd Reading Concurred	99	0

Returned to Senate
 2/04 Sent to Enrolling
 2/05 Returned from Enrolling
 2/06 Signed by President
 2/09 Signed by Speaker
 2/09 Transmitted to Governor
 2/11 Signed by Governor
 2/12 Chapter Number Assigned
 Chapter Number 5
 Effective Date: 7/01/1999 - All Sections

SB 8 Introduced by Hargrove *LC0138 Drafter: MacMaster*

Provide That a Prosecutor May Obtain a Court Order Allowing a Telephone Service Provider to Work with a Law Enforcement Agency as Part of a Criminal

SENATE BILLS AND RESOLUTIONS

Investigation for the Purpose of Recording and Providing the Law Enforcement Agency with Telephone Numbers That Are Dialed from a Particular Telephone and the Telephone Numbers of Particular Telephones Used to Dial a Telephone Number;...

12/02	Introduced		
12/22	Referred to Judiciary		
1/04	1st Reading		
1/06	Hearing		
1/14	Committee Executive Action--Bill Passed as Amended	9	0
1/14	Committee Report--Bill Passed as Amended		
1/16	2nd Reading Passed	45	2
1/18	3rd Reading Passed	44	5

1/19	Transmitted to House		
1/25	Referred to Judiciary		
1/25	Hearing		
2/05	Committee Executive Action--Bill Concurred as Amended	14	6
2/05	Committee Report--Bill Concurred as Amended		
3/04	2nd Reading Concurred	82	17
3/05	3rd Reading Concurred	78	22

3/09	Returned to Senate with Amendments	50	0
3/10	2nd Reading House Amendments Concurred	50	0
3/10	3rd Reading Passed as Amended by House		
3/10	Sent to Enrolling		
3/11	Returned from Enrolling		
3/12	Signed by President		
3/13	Signed by Speaker		
3/15	Transmitted to Governor		
3/17	Signed by Governor		
3/19	Chapter Number Assigned		
	Chapter Number 97		
	Effective Date: 10/01/1999 - All Sections		

SB 9 Introduced by McNutt *LC0150 Drafter: K. Williams*

Limit the Requirement That the Legislature Affirm Certain Large-scale Changes of Water Right Authorization to Only Those Changes That Involve Out-of-state Transportation and Use;...

By Request of Department of Natural Resources and Conservation

12/02	Introduced		
12/22	Referred to Natural Resources		
1/04	1st Reading		
1/06	Hearing		
1/11	Committee Executive Action--Bill Passed	10	0
1/11	Committee Report--Bill Passed		
1/12	2nd Reading Passed	50	0
1/13	3rd Reading Passed	44	0

1/14	Transmitted to House		
2/02	Referred to Natural Resources		
2/02	Rereferred to Agriculture		
2/09	Committee Executive Action--Bill Concurred	20	0
2/09	Hearing		
2/10	Committee Report--Bill Concurred		

SENATE BILL NO. 8
INTRODUCED BY HARGROVE D

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PROSECUTOR MAY OBTAIN A COURT ORDER ALLOWING A TELEPHONE SERVICE PROVIDER TO WORK WITH A LAW ENFORCEMENT AGENCY AS PART OF A CRIMINAL INVESTIGATION FOR THE PURPOSE OF RECORDING AND PROVIDING THE LAW ENFORCEMENT AGENCY WITH TELEPHONE NUMBERS THAT ARE DIALED FROM A PARTICULAR TELEPHONE AND THE TELEPHONE NUMBERS OF PARTICULAR TELEPHONES USED TO DIAL A TELEPHONE NUMBER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Pen register" means a device that records or decodes electronic or other impulses that identify a number dialed or otherwise transmitted on a telephone line to which the pen register is attached. The term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services or used for cost accounting or similar purposes in the ordinary course of business.

(2) "Trap and trace device" means a device that records or decodes incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

NEW SECTION. Section 2. Limitations on use of pen register or trap and trace device. (1) Except as provided in subsection (2), a person may not install or use a pen register or trap and trace device without a court order obtained under [section 3].

(2) Subsection (1) does not apply to the installation or use of a pen register or trap and trace device by a provider of a wire or electronic communication service:

(a) for the:

(i) operation, maintenance, or testing of the service;

(ii) protection of the rights and property of the provider; or

(iii) protection of a user of the service from abuse of or unlawful use of the service;

(b) to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the communication or a user of the service from fraudulent, unlawful, or abusive use of the service; or

(c) if the consent of each person whose originating or transmitted number is recorded or decoded is obtained.

(3) A person who knowingly violates subsection (1) commits a criminal offense punishable upon conviction by incarceration for a period of up to 6 months and a fine of up to \$500.

NEW SECTION. Section 3. Order for pen register or trap and trace device -- installation disclosures. (1) A prosecutor may apply to the district court for an order, or for the extension of an existing order, for the installation and use of a pen register or a trap and trace device. The application must be in writing and under oath. The application must name the prosecutor and must also name the law enforcement agency that will use the pen register or trap and trace device. The applicant shall show probable cause for the order.

(2) If the court is satisfied that the applicant has shown probable cause for the order, the court shall issue the order. The order must state:

(a) the name, if known, of each person to whom the telephone line is leased or in whose name the telephone line to which a pen register or trap and trace device is to be attached is listed;

(b) the name, if known, of each person who is the subject of the criminal investigation;

(c) the number and, if known, the physical location of each telephone line to which a pen register or trap and trace device is to be attached and, for a trap and trace device, the geographic limits of the court order; and

(d) the offense or offenses to which the information that might be obtained relates.

(3) The order must direct the provider of the telephone service and a landlord, custodian, or other person to furnish the prosecutor and law enforcement agency with the information, facilities, and technical assistance necessary to install and operate the pen register or trap and trace device. The installation and operation must create the most minimal interference with the telephone service of each person whose originating or transmitted telephone number is recorded or decoded. Information received

1 by the service provider from the operation of the pen register or trap and trace device must be given to
2 the law enforcement agency at reasonable intervals during regular business hours.

3 (4) The order may cover a period not to exceed 60 days and may be extended for periods not to
4 exceed 60 days for each extension. An extension may be granted only if the court is satisfied that
5 probable cause for the extension has been shown.

6 (5) A person leasing or owning a telephone line that is subject to the order, the provider of the
7 service, and any other person with knowledge of the order, pen register, or trap and trace device may not
8 disclose the existence of the order, pen register, or trap and trace device to any person without the
9 court's permission.

10 (6) A service provider, landlord, custodian, or other person must be reasonably compensated by
11 the law enforcement agency for expenses incurred in furnishing facilities or assistance relating to the
12 order.

13
14 NEW SECTION. Section 4. Immunity from suit. Except for gross negligence or willful or wanton
15 misconduct, there is no cause of action against a service provider, landlord, or custodian or their officers,
16 employees, or agents or other person for injury or damage caused in furnishing facilities or assistance
17 under the order or against a service provider or its officers, employees, or agents for providing the law
18 enforcement agency with information received from the operation of the pen register or trap and trace
19 device.

20
21 NEW SECTION. Section 5. Procedural irregularity -- rule of evidence. An irregularity in a
22 proceeding under [sections 1 through 4] may not be used to exclude evidence obtained under an order
23 unless the irregularity affects substantial rights of the accused.

24
25 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 5] are intended to be
26 codified as an integral part of Title 46, and the provisions of Title 46 apply to [sections 1 through 5].

27 - END -

INDEX TO BILLS IN COMMITTEE

- Committee: (S) Judiciary -

June 30, 1999

04:57 PM

- | | | |
|-------|--|---|
| SB 6 | SPONSOR: Hargrove, Don | SHORT TITLE: Revise drug precursor laws |
| | BY REQUEST OF: (H) Judiciary Standing Committee | |
| | REFERRED ON: 12/22/1998 | HEARD ON: 01/06/1999 |
| | EXECUTIVE ACTION: 01/06/1999 Bill Passed -- VOTE: 9 - 0 | |
| | FINAL DISPOSITION 02/20/1999 Chapter Number Assigned | |
| SB 8 | SPONSOR: Hargrove, Don | SHORT TITLE: Telephone tap to record numbers dialed by or calling a person |
| | REFERRED ON: 12/22/1998 | HEARD ON: 01/06/1999 |
| | EXECUTIVE ACTION: 01/14/1999 Bill Passed as Amended -- VOTE: 9 - 0 | |
| | FINAL DISPOSITION 03/19/1999 Chapter Number Assigned | |
| SB 16 | SPONSOR: Keenan, Bob | SHORT TITLE: Limit liability for Y2K millennium computer errors |
| | BY REQUEST OF: Department Of Administration | |
| | REFERRED ON: 12/22/1998 | HEARD ON: 01/11/1999 |
| | (S) Discussed in Committee ON | |
| | (S) Discussed in Committee ON | |
| | (S) Discussed in Committee ON | |
| | EXECUTIVE ACTION: 02/12/1999 Bill Passed as Amended -- VOTE: 6 - 3 | |
| | FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee | |
| SB 20 | SPONSOR: Shea, Debbie | SHORT TITLE: Revise procedure for Board of Pardons and Parole |
| | BY REQUEST OF: Board Of Pardons And Parole | |
| | REFERRED ON: 12/22/1998 | HEARD ON: 01/08/1999 |
| | EXECUTIVE ACTION: 01/14/1999 Bill Passed as Amended -- VOTE: 9 - 0 | |
| | FINAL DISPOSITION 04/23/1999 Chapter Number Assigned | |
| SB 22 | SPONSOR: Mohl, Arnie | SHORT TITLE: Revise training of parole, probation, and corrections officers |
| | BY REQUEST OF: Department Of Corrections | |
| | REFERRED ON: 12/22/1998 | HEARD ON: 01/08/1999 |
| | EXECUTIVE ACTION: 01/14/1999 Bill Passed as Amended -- VOTE: 9 - 0 | |
| | FINAL DISPOSITION 04/16/1999 Chapter Number Assigned | |
| SB 24 | SPONSOR: Nelson, Linda | SHORT TITLE: Eliminate authority for part-time youth probation officers |
| | REFERRED ON: 12/22/1998 | HEARD ON: 01/06/1999 |
| | EXECUTIVE ACTION: 01/12/1999 Bill Passed -- VOTE: 9 - 0 | |
| | FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee | |

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 6, 1999
at 9:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Services Division

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 6, SB 8, SB 24, SB 54,
1/3/1999
Executive Action: SB 6

HEARING ON SB 6

Sponsor: SEN. DON HARGROVE, SD 16, Belgrade

Proponents: Mike Batista, Administrator of the Division of
Criminal Investigation, Dept. of Justice
Kent Funyak, Cascade County Undersheriff
Roland Mena, Bureau Chief of Chemical Dependency,
Department of Public Health and Human Services

CHAIRMAN GROSFIELD questioned how the intent to manufacturer drugs could be verified. Mr. Batista stated this was demonstrated through the information which surfaced from an investigation. The information can be provided by an informant, corroboration of an undercover agent, or through the purchase of the drugs.

Closing by Sponsor:

SEN. HARGROVE closed on SB 6.

{Tape : 1; Side : A; Approx. Time Counter : 9.22}

HEARING ON SB 8

Sponsor: SEN. DON HARGROVE, SD 16, Belgrade

Proponents: Mike Batista, Administrator of the Division of Criminal Investigation, Dept. of Justice
Kent Funyak, Cascade County Undersheriff
Troy McGee, Chiefs of Police Association
Jim Smith, Montana Sheriffs and Peace Officers Association
Jerry Williams, Montana Police Protective Association

Opponents: Scott Crichton, American Civil Liberties Union
Barbara Ranf, U.S. West

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, Belgrade, introduced SB 8 which adds another tool for law enforcement. This legislation would allow for the use of a device to provide numbers dialed in a particular location. This is not a phone tap. It allows law officers to be pro-active and focus their effort at a higher level.

Proponents' Testimony:

Mike Batista, Administrator of the Division of Criminal Investigation, Dept. of Justice, explained that a pen register and trap and trace device is an investigative tool that would allow for better focus of quality violators. This would include violators who are the ones making the money in the organization. After a law enforcement officer obtains a court order, it would be presented to the telephone company which would help to install the device on a suspect's phone line. The information would include outgoing telephone numbers dialed from a suspect's phone and incoming telephone numbers received at the suspect's home

phone. Homicide investigations, solicitation to commit murder, and witness tampering are good applications for a pen register or trap and trace device. This device is also valuable for officer safety in surveillance of a drug case.

Mr. Batista provided a chart illustrating the use of a trap and trace device, EXHIBIT(4). The phone numbers provided would allow law enforcement agents to identify the street level dealers and the supplier. Once the key persons are identified, the investigative resources can be focused towards those persons. A pen register and trap and trace device may currently be used in Montana by going through a federal law enforcement agency. There are four drug enforcement agents in the state who are spread very thin. Urban traffickers are moving to rural areas in Montana in record numbers.

Kent Funyak, Cascade County Undersheriff, stated that it is extremely important for law enforcement personnel to be proactive in all areas of investigations. This is a timesaving tool which can provide valuable information with minimum man hours invested. It makes sense to gather information quickly and get to the higher level of drug traffickers. These people are very ingenious and use other people as buffers to prevent them from being caught.

Troy McGee, Montana Chiefs of Police Association, stated that for law enforcement to be able to get a trap and trace device, it would be necessary to prove to the prosecutor in the county that one is deserved. The next step is approval by the district court through probable cause.

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support of SB8.

Jerry Williams, Montana Police Protective Association, rose in support of SB8. He added that this device does not record telephone conversations, but only provides the investigators with telephone numbers to conduct further investigation.

{Tape : 1; Side : A; Approx. Time Counter : 9.30}

Opponents' Testimony:

Scott Crichton, American Civil Liberties Union, provided written testimony, EXHIBIT(5). He remarked that the Fourth Amendment was devised by people who understood the meaning of intrusive government in their homes and private lives. Section 3 of the bill attempts to respect the Fourth Amendment. Section 2 raises some questions. He has spoken with representatives of the phone company and understands that these are technical issues regarding

maintenance of lines and handling of accounts and would not provide any open doors for circumventing a court order. He has had a discussion with **SEN. HARGROVE** regarding the amount of governmental resources aimed at addressing the impacts of drugs in our society. He hoped that discussions would be centered on discussing the pros and cons of the prohibitions which have been sent up.

{Tape : 1; Side : B; Approx. Time Counter : 9.33}

Barbara Ranf, U.S. West, stated that with an amendment, they would be comfortable with the legislation. On page 1, new section 1 includes the definitions of pen register and trap and trace device. They requested inserting the language that these terms do not include communication services, such as, but not limited to, caller identification services.

Questions from Committee Members and Responses:

SEN. GRIMES questioned whether this legislation may inadvertently make it illegal to record a telephone communication. In the definition section, it states that this term does include a devise used by a provider or customer. It later states that it does not include a devise used for the following things and doesn't include ID caller services nor normal voice recording systems. **Mr. Batista** stated that an additional definition on caller ID would be warranted.

SEN. GRIMES added that there may be an instance in a domestic abuse case, in particular, that a party may want to record a communication for defensive purposes. **Joe Thaggard, Assistant Attorney General**, stated that a voice recording does not fall within the definitions of pen registers and trap and trace devices. Voice recordings would be covered under the privacy and communications statutes. He agreed that an amendment regarding caller ID would be appropriate.

SEN. GRIMES commented that on page 3, subsection (5) stated that a person who is a landlord or provider or any other person may not disclose the existence of the order to any person without the court's permission. This needed to be clearly communicated to people who are affected. **Mr. Thaggard** explained that the practice with investigative subpoenas is that it states broadly and boldly that disclosure is unlawful.

SEN. GRIMES remarked that someone may be acquainted with a person who happens to be involved with drug dealing. If this person's number was on the list numerous times, would the person be

implicated. **Mr. Thaggard** contended that a negative inference would not be drawn in that instance.

SEN. DOHERTY remarked that an analogy was made to a search warrant. Section 3 creates a new body of law for an order for a pen register and trap and trace device. He questioned why this wasn't incorporated into the normal standards used by judges when determining whether to grant a search warrant. **Mr. Thaggard** explained that several years ago there were amendments to the federal pen register statutes. This legislation sets out distinctions between pen registers and search and seizure.

SEN. DOHERTY maintained that the standards and the criteria employed by the judges are analogous as to whether they would grant a search warrant. **Mr. Thaggard** affirmed and added that this is a probable cause standard. It is necessary that this be separate from the search and seizure provision. When a search warrant is issued and served, within 10 days a written return needs to be provided to the person whose property has been searched. Applying this to a pen register would cause the advantage in investigating the crime to be lost.

SEN. DOHERTY asked for further clarification of Sections 4 and 5. If this is analogous for the search warrant, is a new body of law being created for judges to determine an irregularity in a proceeding in order to determine when exclusion of this type of evidence would be warranted in trial. Also, if this is analogous to a search warrant, are individuals who disclose information obtained in a search warrant immune from suit. **Mr. Thaggard** explained that the provisions on procedural irregularity were drawn from the search and seizure statutes. He referred the Committee to §46-5-103 which addressed the exclusion of evidence in search and seizure cases in which there may have been a procedural irregularity. Regarding immunity from suit, the intention is that this legislation not burden the telecommunications industry given the fact that they will be a party to assisting in the execution of any pen register orders. This is also included in the Federal Pen Registry Act. There are provisions which provide law enforcement officers with the authority to instruct individuals to help them in the execution of a warrant. Once those people are instructed to act as agents of the state, they should be indemnified in the event of a civil suit.

SEN. DOHERTY raised a concern about phone records of persons who have communicated with someone who is being investigated becoming public information. The immunity may also encourage a high degree of perfectionism in making sure an innocent party is not involved. **Mr. Thaggard** stated that subsection (4) refers to the telecommunications industry, landlords, custodians, employers,

etc. If the records were unlawfully disclosed by a state agent, that person should be subject to liability for suit. This would not give the investigate agencies immunity from suit.

{Tape : 1; Side : B; Approx. Time Counter : 9.55}

SEN. BARTLETT questioned where the devices would be physically located. Mr. Batista stated that his understanding is that the actual device is placed on the phone line. The device that records the information would be in a law enforcement office in a secure area. Barbara Ranf, U.S. West, agreed to provide the Committee with this information.

SEN. BARTLETT questioned whether there were occasions where an order was sought but was denied by the judge. Mr. Batista stated that he has had experiences where an order was denied due to lack of information to support that someone was engaged in criminal activity.

SEN. BISHOP asked if neighbors and acquaintances would be used to screen out individuals who received numerous phone calls from a suspect. Mr. Batista stated that this would involve looking at the person involved and other information in the case. It is easy to make a determination as to whether the person would have the necessary involvement in the criminal activity being reviewed. Frequency of calls is insignificant on a pen register.

SEN. BARTLETT asked for clarification of the provisions in Section 2 which were questioned by the ACLU. Mr. Thaggard stated that their perception of Section 2 is that it applies only to providers and insures that a provider is not prevented from conducting their normal course of business. Section 2 would not provide a basis for any law enforcement agent to circumvent the provisions for a court order requirement. The Fourth Amendment is important to everyone including criminal suspects. Ms. Ranf remarked that the section allows the telecommunications industry to use the types of devices that allow them to track ingoing and outgoing traffic for the normal maintenance and testing of their network.

SEN. BARTLETT referred to subsection (iii) on line 2, page 2, which included protection of a user of the service and questioned whether there might be instances in which these devices might be used in domestic violence situations. Ms. Ranf remarked that she would provide examples for the Committee.

{Tape : 1; Side : B; Approx. Time Counter : 10.08}

SEN. HALLIGAN asked who would be able to obtain the information gathered from these devices. Mr. Thaggard responded that law enforcement agencies would be able to obtain the information. For other individuals, a petition would need to be filed in the district court and a specific finding would need to be made that some entity's right to know outweighed the right of privacy of the person involved. Routinely the state does possess sensitive information about a number of individuals and their privacy interest is protected. In the instance of investigative procedures and search warrants, the applications and search warrants are sealed until the court holds otherwise.

CHAIRMAN GROSFIELD questioned whether other states with similar legislation were limited to drug trafficking. Mr. Batista responded that other states apply pen registry and trap and trace devices to any type of criminal investigation where it may be valuable. This could be used for a severe domestic abuse case that included stalking.

CHAIRMAN GROSFIELD asked Mr. Crichton if the ACLU was strongly opposed to the legislation. Mr. Crichton explained that after discussing the legislation with SEN. HARGROVE he was assured that he understood the Fourth Amendment and would see that this legislation respected the Fourth Amendment. If the understanding is that the language in Section 2 will not be used to circumvent a court order, this would address most of their concern.

SEN. HARGROVE provided the Committee with an amendment from U.S. West and agreed to have it included in the bill. He added that he is very concerned about the protection of individual rights.

Memo of January 7th from Barbara Ranf, USWest, EXHIBIT(6).

HEARING ON SB 24

Sponsor: SEN. NELSON, SD 49, Medicine Lake

Proponents: Gordon Morris, Montana Association of Counties

Opponents: Sandy Oitzinger, Montana Juvenile Probation
Officers Assoc.
Allen Horsfall, Board of Crime Control

Opening Statement by Sponsor:

SEN. NELSON, SD 49, Medicine Lake, introduced SB 24. She remarked that this legislation has been requested by the district court judge who has the three northeast counties of Sheridan, Roosevelt, and Daniels. He would like to be able to appoint a

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD** on January 13, 1999
at 9:00 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Steve Doherty (D)
Sen. Sue Bartlett (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Jodi Pauley, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 158, 1/8/1999; SB 165,
1/8/1999
Executive Action: SB 8; SB 20; SB 54; SB 60;
SB 63

HEARING ON SB 158

Sponsor: SENATOR BILL GLASER, SD 8, Huntley

Proponents:

Brenda Nordland, MT Department of Justice

{Tape : 1; Side : B; Approx. Time Counter : 10:17 a.m.}

EXECUTIVE ACTION ON SB 8

Motion: SENATOR DOHERTY moved amendments for SB 8. EXHIBIT(5)

Discussion:

Valencia Lane discussed amendments. (EXHIBIT 5) She also discussed a memorandum from Joe Thaggard, Department of Justice. EXHIBIT(6)

SENATOR DOHERTY said he was concerned about procedural irregularity and what those terms meant. The search and seizure ground is murky enough already without adding new areas. He referred to the memorandum. (EXHIBIT 6)

CHAIRMAN GROSFIELD asked if the amendments satisfy their concerns. He read from title 44, chapter 5 on confidential criminal justice information. The question is, if John Doe whose child is a friend of the drug runner's child and they are talking about soccer etc. several times a day, is that person's identity going to be protected. **Valencia Lane** said there was great concern that innocent people may be hurt or picked up in this web of information. Amendment #5 will cover this. (EXHIBIT 5) She said this information will be treated like any other criminal justice information and there are controls and limitations on how the information can be used.

CHAIRMAN GROSFIELD asked if any criminal justice information is confidential and are they adding to the information in Title 44. **Valencia Lane** said no, they are not adding to it, but it is clarified. **Mike Batista, MT Department of Justice**, said this information is protected by the criminal justice statute. It is no different than an investigative type of situation where those things remain confidential.

CHAIRMAN GROSFIELD asked how those can be accessed and under what circumstances. **Mike Batista** said it can only be accessed or provided in the course of a trial or in appeal.

CHAIRMAN GROSFIELD asked if in the course of the trial, the prosecutor is likely to ask for or the judge will grant a request for the phone recorders to be entered as an exhibit. Will only the portion that involves the suspects be entered or the whole thing? **Mr. Batista** said only the suspects would be used not the whole phone record.

CHAIRMAN GROSFIELD asked how is this normally done? **Mr. Batista** said normally the prosecution will use only information that supports prosecution.

CHAIRMAN GROSFIELD asked why can't they clarify that in the statute? **Beth Baker, MT Department of Justice** said when she worked in the federal court they will only highlight the numbers that they want to draw the jury's attention to. Those records are put in as exhibits, but they are not strictly made public. If the prosecutor is concerned about an individual's privacy right they could blacken out the other numbers. Steps could be taken on a case by case basis.

SENATOR GRIMES said amendment #2 satisfies some of his concerns. He also discussed amendment #5. **(EXHIBIT 5)**

CHAIRMAN GROSFIELD said in some communities there may be a local official or some aggressive reporter that will destroy someone's career because they get caught up in the loop and are exposed. **Valencia Lane** said the intent of the amendment is that they are protecting innocent people. **(EXHIBIT 5)**

SEN. HALLIGAN said the attorney is going to want the entire phone record and the prosecutor will decide at what point to blacken certain numbers out. This is going to have to be dealt with on a case by case basis and innocent people are going to have to be protected.

SEN GRIMES said there has to be some other probable cause, they can't just prosecute on a telephone number.

SEN. DOHERTY said he doesn't know how much more confidential they can make it in terms of the criminal justice information act. He said it may be hard to differentiate between party "x" and "y." There may be 25 calls to party "x," the accused, and 50 calls to party "y," who is the upstanding citizen. He said in current law party "y" still may be accused and dragged into a criminal investigation. He said he is uncomfortable with it in current law and this legislation at least makes it some better.

Valencia Lane discussed 6 and 7 of the amendments. **(EXHIBIT 5)**

Vote: Motion carried unanimously 9-0.

Motion/Vote: **SEN. JABS** moved that SB 8 DO PASS AS AMENDED.

Motion carried unanimously 9-0.

{Tape : 2; Side : A; Approx. Time Counter : 10:45 a.m.}

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

-
- SB 6** **SPONSOR:** Hargrove, Don **SHORT TITLE:** Revise drug precursor laws
 BY REQUEST OF: (H) Judiciary Standing Committee
 REFERRED ON: 01/09/1999 **HEARD ON:** 01/19/1999
 EXECUTIVE ACTION: 01/22/1999 Bill Concurred -- VOTE: 17 - 1
 FINAL DISPOSITION 02/20/1999 Chapter Number Assigned
-
- SB 8** **SPONSOR:** Hargrove, Don **SHORT TITLE:** Telephone tap to record numbers dialed by or calling a person
 REFERRED ON: 01/19/1999 **HEARD ON:** 01/25/1999
 EXECUTIVE ACTION: 02/05/1999 Bill Concurred as Amended -- VOTE: 14 - 6
 FINAL DISPOSITION 03/19/1999 Chapter Number Assigned
-
- SB 16** **SPONSOR:** Keenan, Bob **SHORT TITLE:** Limit liability for Y2K millennium computer errors
 BY REQUEST OF: Department Of Administration
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/02/1999
 TABLED ON: 03/08/1999
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 20** **SPONSOR:** Shea, Debbie **SHORT TITLE:** Revise procedure for Board of Pardons and Parole
 BY REQUEST OF: Board Of Pardons And Parole
 REFERRED ON: 01/19/1999 **HEARD ON:** 01/27/1999
 EXECUTIVE ACTION: 01/29/1999 Bill Concurred as Amended -- VOTE: 19 - 1
 FINAL DISPOSITION 04/23/1999 Chapter Number Assigned
-
- SB 22** **SPONSOR:** Mohl, Arnie **SHORT TITLE:** Revise training of parole, probation, and corrections officers
 BY REQUEST OF: Department Of Corrections
 REFERRED ON: 02/16/1999 **HEARD ON:** 03/03/1999
 EXECUTIVE ACTION: 03/30/1999 Bill Concurred -- VOTE: 13 - 7
 TABLED ON: 03/03/1999
 FINAL DISPOSITION 04/16/1999 Chapter Number Assigned
-
- SB 24** **SPONSOR:** Nelson, Linda **SHORT TITLE:** Eliminate authority for part-time youth probation officers
 REFERRED ON: 01/18/1999 **HEARD ON:** 01/22/1999
 TABLED ON: 01/29/1999
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on January 25, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Date: 1/25/1999 HB339, SB8,
HB357,

Date Posted: 1/22/1999

Executive Action: HB 251, 263-

Tabled. HB 257-Do Pass as Amended, HB 209-Do Pass as Amended, HB
233-Do Pass, HB 24-Do Pass, HB 357-Do Pass

HEARING ON HB 339

Sponsor:

Rep. Sliter presented HB 339.

{Tape : 1; Side : A; Approx. Time Counter : 29 - 100}

Proponents:

Al Smith, Montana Trial Lawyers Association

{Tape : 1; Side : A; Approx. Time Counter : 100 - 109}

Bill Eggers, House District #6

{Tape : 1; Side : A; Approx. Time Counter : 109 - 161}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 161 - 367}

Closing by Sponsor:

Rep. Sliter made closing remarks.

{Tape : 1; Side : A; Approx. Time Counter : 367 - 439}

HEARING ON SB 8

Sponsor:

Rep. Hargrove presented SB 8.

{Tape : 1; Side : A; Approx. Time Counter : 439 - 550}

Proponents:

Mike Batista, Dept. of Justice

{Tape : 1; Side : B; Approx. Time Counter : 0 - 51}

EXHIBIT(1)

Kent Funyak, Montana Narcotic's Association

{Tape : 1; Side : B; Approx. Time Counter : 51 - 83}

Jim Smith, Montana Sheriffs and Peace Officers Association

{Tape : 1; Side : B; Approx. Time Counter : 83 - 93}

Jeff Fister, Montana Telecommunications Association

{Tape : 1; Side : B; Approx. Time Counter : 93 - 107}

Opponents:

Scott Crichton, ACLU

{Tape : 1; Side : B; Approx. Time Counter : 107 - 214}

EXHIBIT(2)

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 214 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 250}

Closing by Sponsor:

Rep. Hargrove made closing remarks.

{Tape : 2; Side : A; Approx. Time Counter : 250 - 360}

HEARING ON HB 357

Sponsor:

Rep. Cobb presented HB 357.

{Tape : 2; Side : A; Approx. Time Counter : 360 - 455}

EXHIBIT(3)

Proponents:

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on February 4, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s): HB 213, 2/6/1999
Date Posted: 2/2/1999

Closing by Sponsor:

Sen. Grosfield made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 19 - 77}

EXECUTIVE ACTION ON HB 374

Deferred; wait for federal opinion.

{Tape : 2; Side : B; Approx. Time Counter : 77 - 91}

EXECUTIVE ACTION ON SB 8

Motion: REP. YOUNKIN moved that SB 8 BE CONCURRED IN.

Motion/Vote: REP. WYATT moved that SB 8 BE AMENDED. Motion failed 8-12 with Ahner, Anderson, Curtiss, Jore, Kitzenberg, McGee, Molnar, Noennig, Shockley, Soft, Wyatt, and Younkin voting aye.

Motion/Vote: REP. SHOCKLEY moved that SB 8 BE AMENDED. Motion carried unanimously.

REP. SHOCKLEY moved that AMENDMENTS BE SEGREGATED.
REP. SHOCKLEY later withdrew AMENDMENTS 2 & 3.

Vote: Motion that SB 8 BE CONCURRED IN AS AMENDED carried 16-4 with Gutsche, Hurdle, Jore, and Williams voting no.

EXECUTIVE ACTION ON SB 32

Motion: REP. ANDERSON moved SB 32 RECONSIDER & BRING OFF THE TABLE.

Motion: REP. ANDERSON moved that SB 32 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON moved that SB 32 BE AMENDED. Motion carried 18-1. REP. MCGEE voted no and REP. CURTISS absent during the vote.

Motion: REP. ANDERSON moved that SB 32 BE CONCURRED IN AS AMENDED.

Motion: REP. HURDLE moved that SB 32 BE AMENDED.
Motion failed by a voice vote.